

regulated as non-dominant carriers if they satisfy the three separation requirements identified in the Competitive Carrier Fifth Report and Order. [PN543] The Commission further concluded that, if the LEC provided low-interstate, interexchange services directly, rather than through an affiliate, those services would be subject to dominant carrier regulation. [PN544]. Upon enactment of the 1996 Act, the BOCs were authorized to provide ~~interstate~~ telecommunications services outside of their regions. [PN545]. In the Interim LEC Out-of-Region Order, the Commission determined that, on an interim basis, the BOCs' out-of-region, interstate, domestic, interexchange services will be subject to the same regulatory treatment as the Commission applied to the independent LEC's' interstate, domestic, interexchange services in the Fifth Report and Order. [PN546]. In the Teleexchange NPEB, the Commission sought comment on whether it should modify or eliminate the separation requirements that are currently imposed on independent LECs and RBOCs in order to qualify for non-dominant treatment for the provision of out-of-region interstate, long exchange services. [PN547].

a. Consumers

In 1996, the BOCs and independent LECs generally argue that they cannot exercise market power if they provide directly out of region, domestic, interstate, interexchange services. [PN548]. Specifically, Ameritech asserts that the Commission may impose requirements as a condition of non-dominant treatment, such as a separate affiliate requirement, only if it can show that such a requirement is necessary to prevent the exercise of market power. [PN549]. Ameritech further argues that the Commission cannot possibly show that a separate affiliate requirement is necessary to prevent the exercise of market power in out-of-region interexchange services, and thus demands that this requirement be non-dominant status. [PN550]. BOCs argue that neither independent LECs nor new-enterprise BOCs have market power in the provision of out of region interexchange services based on the market power factors outlined in the Reclassification Order. [PN551]. Furthermore, BART asserts that the Competitive Carrier Fifth Report and Order separation requirements are not necessary for small independent LECs. [PN552]. The Ohio Consumer Counsel argues, however, that rural carriers without a national presence should be subject to separation requirements if they receive suspensions or modification of section 205(d)(1) or (2) of the 1996 Act. [PN553].

BOC. In addition, the BOCs and independent LECs generally claim that they no longer possess bottleneck control over exchange access services and that the Fifth Report and Order separation requirements are not necessary to prevent cross-subsidization and discrimination. [PN554]. Ameritech notes that the Commission has found that a firm or group of firms has 'bottleneck control' when it has sufficient ownership and/or sole essential commodity or facility in the industry or market to be able to impede new entrance. [PN555] Ameritech asserts that, if BOCs do not long-distance entry because any such effort would be a blatant violation of equal service obligations and the Communications Act, and such an attempt would surely be discovered and punished. [PN556]. Furthermore, several BOCs argue that, to the extent bottleneck control previously existed, the 1996 Act will reduce it by requiring interconnection and access to unbundled elements and rates or, and by creating incentives for BOCs to implement these provisions in order to enter in region long-distance. [PN557]. Several BOCs further respond that they have neither the incentive nor the opportunity to cross-subsidize their long distance services. [PN558]. NYNEX, BellSouth and GTE contend that separation requirements are unnecessary because the BOCs' rates for access services use FDR and no price caps. [PN559]. NYNEX asserts that Commission's rules prohibit the allocation of costs between interexchange and access services and requires TRS to impute to their interexchange services the same access rates they charge to other carriers for in-region services. [PN560]. Ameritech and Bell Atlantic argue that price caps (particularly without ceiling and cost allocation rules) will prevent cross-subsidization. [PN561]. Bell Atlantic also

commenters that geographic separation between a BOC's local exchange operations and out-of-region long distance services eliminates the potential for cost shifting. [FN562]

201. Numerous non-BOC commenters, on the other hand, contend that the Commission should treat BOCs and independent LECs as non-dominant for out-of-region interexchange services only as long as they satisfy the separation requirements in the Fifth Report and Order. [FN563] CompTel argues that the focal point of any decision to classify a BOC as dominant or non-dominant in interexchange services will not be the level of competition in the interexchange market, but the extent to which the BOC has local duopoly power in local exchange and exchange access services. [FN564] In addition, numerous commenters argue that the separation requirements are necessary to prevent cross-subsidization, unreasonable discrimination or other anticompetitive conduct. [FN565] Sprint contends that the Fifth Report and Order requirements are the most, and perhaps the only reliable tool at hand for detecting and preventing cross-subsidization and discrimination. [FN566] The Missouri Commission claims that, unless LECs are required to maintain separate records for their LEC and IXC operations, it will be difficult, if not impossible, to determine whether any improper discrimination or cross-subsidization has occurred. [FN567] The Alabama Commission asserts that the separation requirements ensure that carriers can compete on an equal basis in the interexchange market. [FN568] NCL argues that the continuing need for separate affiliate requirements is underscored by recent federal and state audits of BOC and LEC affiliate transactions, which uncovered improper cost allocations and demonstrated the ineffectiveness of the cost allocation regulations in preventing LEC cross-subsidies between regulated and unregulated services. [FN569]

202. In addition, several commenters claim that the BOCs and independent LECs have significant incentives to engage in improper cost allocation, discrimination, and other anti-competitive behavior, and are able to engage in such behavior due to their control of bottleneck facilities. [FN570] For example, NCL contends that the independent LECs' and BOCs' local bottleneck power can be exploited beyond their service areas by discriminating against an LEC dependent on the BOC or independent LEC for access in its region, thereby damaging the LEC's reputation on a national basis. [FN571] MCI further asserts that the similarity, and in some cases identity, of facilities used for monopoly and interexchange services would greatly aggravate the risks of cross-subsidization and discrimination on the terminating end of such calls. [FN572]

Vanguard claims that, as suppliers of an essential input, BOCs are in a position to affect the cost structures of their competitors. [FN573] More specifically, Vanguard argues that any increase in charges for terminating traffic will raise the costs of non-affiliated interexchange providers that terminate calls over the same route. Vanguard notes that these increases must be absorbed by competitors, but will not injure the BOC because raising access charges to its affiliate will merely result in an intradomestic transfer. [FN574] Commenters further contend that BOCs and independent LECs can discriminate in a variety of ways, such as slow service provisioning, delayed information about or roll-out of new technologies, less responsive maintenance and customer service, and poorer connections. [FN575] MCI asserts that LECs also can exploit information obtained in their capacity as local service providers to gain an advantage in out-of-region interexchange marketing, including such information as validation databases, and that they can manipulate the price or other terms and conditions of terminating traffic, including limiting access to certain signalling information. [FN576]

203. Several commenters contend that the cost and asset shifting techniques available to incumbent BOCs are hard to detect and are not deterred by price caps. [FN577] MFS disputes BOC arguments that geographical separation between the BOC's in-region exchange business and out-of-region interexchange traffic, fees and price cap regulation most concerns about cost shifting. MFS asserts that a BOC's ability to fund anticompetitive pricing schemes in the interexchange

market firm, local exchange market profits is not impeded just because these markets are not perfectly competitive or because the BOC performs artificial cost allocations. AT&T argues that price cap mechanisms do not perfectly reflect actual cost changes and can yield windfall unintended profits for BOCs which could be used to subsidize interexchange services. [FN576] AT&T concludes that the BOCs' assertions that price cap regulation removes exchange carriers' ability and incentive to allocate costs improperly ignores the fact that not all BOCs have elected voice caps, and those that have may periodically elect a "sharing" option. [FN577] MCI asserts that "pure" price caps do not deter cross-subsidization because the conferring of monopoly-derived benefits upon a BOC's or independent LEC's interexchange operations at less than their economic value substantially subsidizes those operations whether or not the BOC or LEC can raise its monopoly rates to absorb additions' costs. [FN580]

204. In addition, numerous commenters contend that even if the fifth Report and Order separation requirements for independent LECs are modified or eliminated, the Commission should maintain these requirements as a condition for non-dominant treatment of the BOC's provision of out-of-region interexchange services. [FN581] Vanguard and USA contend that the BOCs have greater opportunity to allocate costs improperly than the independent LECs because of their greater number of services, larger service territories, and more extensive interoffice facilities. [FN582] Vanguard argues, for example, that each BOC serves about one-eighth of all U.S. telephone subscribers in largely contiguous service territories, which means that the BOCs receive more calls than other LECs and have more opportunities to manipulate the price and quality of terminating access than other companies. [FN583] Vanguard argues that the proposed BOC mergers would further widen the size differentials between the BOCs and independent LECs. [FN584]

205. Several non-LECs contend that the Competitive Carrier Filings Report and Order separation requirements are insufficient to protect against abuse by BOCs and independent LECs, and, therefore, propose additional safeguards. These commenters urge the Commission to: (1) impose full structural separation of the out-of-region affiliate, [FN585]; (2) prohibit joint marketing of local and out-of-region, interexchange services; [FN586] (3) require that a BOC's out-of-region affiliate have no preferential access to non-BTC IC services offered by the LEC; [FN587] (4) require that the LEC's affiliate transaction practices and cost allocation procedures be subject to annual independent audit; [FN588] and (5) prohibit the affiliate from receiving proprietary information unless it is made own' sole to nonaffiliates on the same basis. [FN589]

IV. Discussion

206. In Section IV, we concluded that a BOC affiliate or independent LEC should be classified as dominant in the provision of in-region, intrastate, domestic, long distance services only if it has the ability to raise prices by restricting its output of those in-region services. We found that even of the traditional market factors (excluding behavioral control) suggest that the BOC interLATA affiliates and independent LECs do not have the ability to raise the price of in-region, intrastate, long distance services by restricting their output of those services. [FN490] We recognized that a BOC's or independent LEC's control of local exchange and switching access facilities potentially gives the BOC or independent LEC an incentive to disadvantage its interexchange competitor through improper allocations of credits, discrimination or other anticompetitive conduct. We concluded, however, that the statutory and regulatory safeguards currently imposed on the BOCs and independent LECs will prevent them from engaging in such anticompetitive conduct. In such an event, that the BOC interLATA affiliates or independent LECs have, or will have, open entry or shortly thereafter, the ability to raise the price of in-region, intrastate, domestic, long distance services by restricting their output of those services. Accordingly, we classify the BOC interLATA affiliates and independent LECs as non-dominant in the provision of these in-region services.

207. We conclude that we should apply a similar analysis in assessing whether to allow by the BOCs and independent LECs to dominate in the provision of out-of-region, interstate, domestic, interexchange services. We conclude that the traditional market power factors (excluding bottleneck facilities -- market share, supply and demand substitutability, local structure, size, and resources -- support a finding that the BOCs and independent LECs do not have, and will not gain the ability in the near term, to raise prices of out-of-region interexchange services by restricting their output of these services. More specifically, we find, first, that the BOCs begin with an interexchange market share of zero while the market share of the independent LECs are negligible when compared to the major interexchange carriers. Second, we find that the same high supply and demand characteristics that the Commission found constrained AT&T's price behavior also apply to the provision of out-of-region interexchange services by the BOCs and independent LECs. Finally, we find that the presence of existing interexchange carriers, including AT&T, MCI, Sprint, and BDU, prevent s the BOCs and independent LECs from using their cost structure, size, and resources to raise prices above the "conduit" or level for that" out-of-region Interstate, domestic, interexchange services.

208. With respect to discrimination concerns related to the provision of out-of-region, interstate, interexchange services by the BOCs and independent LECs, we note that these carriers are not the dominant providers of originating exchange access services in out-of-region areas. We also note that majority of the discrimination concerns raised by commenters focus on inferior interconnection to a BOC's network for originating exchange access. We therefore find that the BOCs' and independent LECs' lack of control over originating access for the competitors' calls originating outside its region significantly limits their ability to discriminate against their interexchange competitors and to engage in other anticompetitive conduct. Although it is possible that a BOC could damage an interexchange competitor's reputation on a national basis by discriminating against an interexchange carrier dependent on it for access in the region, we believe this is unlikely because the BOCs and independent LECs are subject to our equal access requirements. [RM-391] In addition, as discussed in Section IV, we believe that the safeguards in place for the provision of in-region, interstate, interexchange services by BOCs and independent LECs further protect against originating exchange access discrimination. [RM-492] We therefore conclude that our equal access provisions and safeguards established for in-region, interstate, interexchange services provide sufficient protection to interexchange carriers for the provision of originating exchange access as well as for the quality of these services. Similarly, although a BOC or an independent LEC may control the facilities used to terminate its interexchange competitor's calls in its in-region service area, we believe it has less opportunity to discriminate against competitors through the control of these facilities. In order to discriminate effectively through control of terminating exchange access, the BOCs and independent LECs would have to convince consumers that an inferior termination connection was the best of their interexchange carrier, and that the only way to obtain efficient termination arrangements to this region would be through the BOCs' or independent LECs' interexchange services. In addition, to the extent such quality degradation is apparent to consumers, it is also likely to be apparent to regulators and interexchange competitors. We also note that the record in the Interexchange proceeding does not demonstrate that the BOCs and LECs have the technical ability to degrade selectively the quality of the interconnection for their interexchange competitors through their control of terminating exchange access. In addition, Section 122 of the Communications Act provides all telecommunications carriers with protection from the misuse of customer proprietary network information. [RM-493] We, therefore, conclude that discrimination by a BOC or independent LEC is unlikely in the context of out-of-region, interstate, interexchange services.

209. In addition, we agree with Bell Atlantic that the geographic separation between a BOC's in-region local exchange and exchange access operations and out-of-

region long distance operations mitigates the potential for undetected improper allocation of costs. [FN592] Because of this geographic separation, it is unlikely that the out-of-region operation will be able to share any transmission or switching facilities, many employees, or other common costs with the in-region operation. Consequently, improper allocation of costs is less problematic with respect to a BOC's or independent LSC's provision of out-of-region long distance services. We further conclude that statutory and regulatory safeguards, including our Part 64 rules, imposed on the BOCs and independent LSCs sufficiently limit any residual ability to disadvantage their rivals by improperly allocating costs between their regulated local exchange and exchange access services and their out-of-region interexchange services. [FN593] Our cost allocation rules control the allocation of cost between interexchange and local services and require a BOC or an independent LSC to impose on its interexchange services the same access rates it charges other carriers. [FN594] Furthermore, in the Arranging Telephones Order, the Commission determined, solely for federal accounting purposes, that out-of-region interLATA services provided by incumbent LSCs on an integrated basis should be treated like nonregulated activities for purposes of our cost allocation rules. [FN595] We find that the existing statutory and regulatory safeguards, coupled with the geographical separation between the BOCs and independent LSCs in region and out-of-region operations, are sufficient to prevent the BOCs and independent LSCs from improperly allocating costs. [FN596] Furthermore, we note that the exchange access services for all of the BOCs and most of the largest independent LSCs are subject to our price cap regulations. As discussed in Section IV, price cap regulation further serves to reduce the potential that the BOCs and independent LSCs will improperly allocate the costs of their interexchange services. [FN597] Consequently, we conclude that the risk that the BOCs and independent LSCs would be able to allocate improperly substantial costs from their out-of-region interLATA services to their monopoly local exchange and exchange access services is not sufficient to warrant imposing separation requirements.

211. We also conclude that the BOCs and independent LSCs will not be able to engage in a price squeeze with respect to their out-of-region, interstate, domestic, interexchange services to such an extent that they will gain the ability to raise prices of long distance services by restricting their output of those services. We are not persuaded by arguments that, because BOCs and independent LSCs have control over terminating exchange access, they will be able to affect a price squeeze by capturing market share by raising the price of terminating access. We note that, because the BOCs and independent LSCs do not have control over originating exchange access for out-of-region, interstate, interexchange services, they will incur the same costs for originating access as their interexchange competitors. In addition, to the extent that a BOC or independent LSC offers out-of-region long distance services on an integrated basis, our rules require the carrier to impose the tariffed originating exchange access rate. [FN600] If a BOC or independent LSC offers out-of-region long distance services through an LSC affiliate, the affiliate will have to pay the tariffed exchange access rate for long distance calls it terminates on the BOC's or independent LSC's in-region network. [FN601] Thus, price cap regulation of exchange access services mitigates the ability of a BOC or independent LSC to effect a price squeeze by increasing terminating exchange access rates. [FN602] Moreover, we believe an attempted price squeeze would be less likely to be effective, because it appears that typically a BOC's originating out-of-region calls that terminate in-region will account for a small percentage of the BOC's total out-of-region originating traffic. [FN603] Finally, we note that there are other adequate mechanisms to address such behavior. More specifically, a BOC or an independent LSC that charges a rate for interstate services below its incremental costs of providing service in the long term would be in violation of sections 201 and 202 of the Act. [FN604] In addition, Federal antitrust law also would apply to the predatory pricing of interstate services.

212. Based on the foregoing, we conclude that the BOCs and independent LSCs do not have, upon entry or soon thereafter, the ability to raise the price of out-of-

region. Interstate, interexchange services by restricting their own output even if they are permitted to provide those services on an integrated basis. We therefore conclude that it is not necessary to require the BOCs or independent LECs to maintain the Competitive Carrier Fifth Report and Order separation requirements as a condition for non-dominant regulatory treatment for the provision of out-of-region, long-distance, interexchange services. [RM605] Upon the effective date of this Order, the requirements established herein for the provision of out-of-region, interstate, interexchange services by BOCs will supersede any conflicting requirements established in the Interim BOC Out-Of-Region Order.

212. Contrary to the comments of USA and Vanguard, [RM606], we find that the record in this proceeding does not demonstrate that a BOC is in a better position than an independent LEC to leverage its in-region monopoly power arising from the control of the local exchange to benefit its provision of out-of-region long-distance services. We therefore conclude that there is no persuasive reason to implement different regulatory schemes for the BOCs and independent LECs in the context of their provision of out-of-region long distance services.

213. We also conclude that the Fifth Report and Order separation requirements and the additional safeguards suggested in the record, [RM607] are not necessary to prevent the BOCs and independent LECs from raising the costs of their interexchange rivalry services originating outside the BOC's or independent LEC's region. As discussed above, we believe that other applicable safeguards, coupled with the geographic separation between the BOCs' and independent LECs' in-region and out-of-region operations will prevent a BOC or independent LEC from favoring its out-of-region interexchange services through improper allocation of costs, discrimination, or other anticompetitive conduct. Further, we found in the Interim BOC Out-Of-Region Order that the commenters presented no persuasive evidence that showed additional safeguards were warranted to prevent improper allocation of costs and discrimination. [RM608] In Section TW.B., we found that no party presented persuasive evidence in this proceeding that shows that it is necessary to impose additional safeguards on the independent LECs as a condition for non-dominant regulatory treatment for the provision of in-region, interstate, interexchange service. [RM609] Consequently, we conclude that the Fifth Report and Order separation requirements and the proposed additional safeguards are unnecessary in this context, and should therefore be eliminated. [RM610]

VI. FINAL REGULATORY FLEXIBILITY ANALYSIS

214. As required by Section 603 of the Regulatory Flexibility Act (RFA), 5 U.S.C. § 603, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in each of the two Notices of Proposed Rulemaking from which this Order issues. [RM611] The Commission sought written public comment on the proposals in the Notices. The Commission's Final Regulatory Flexibility Analysis (FRFA) in this Order conforms to the RFA, as amended by the Contract With America Advancement Act of 1996 (CWAAA). [RM612]

A. Need for and Objectives of This Report and Order and the Regulations Adopted Therein

215. In the 1996 Act, Congress sought to establish a pro-competitive, de-regulatory national policy framework for the United States telecommunications industry. [RM613] Three principal goals of the Telephony provisions of the 1996 Act are: (1) opening local exchange and exchange access markets to competition; (2) promoting increased competition in telecommunications markets that are already open to competition, particularly long distance services markets; and (3) reforming our system of universal service so that universal service is preserved and delivered as

LEADER, and the classifier is a mixed model based on the two class classifier which classifies training subjects into those who have had a history of disease and those who have not. The model also identifies the probability of each subject having a history of disease based on their age and sex (Age).

The first section of the manuscript discusses the development and application of the proposed model. This includes a detailed description of the data used, the methods employed, and the results obtained. The second section presents the model's performance in terms of its accuracy, sensitivity, specificity, and precision. The third section concludes with a summary of the findings and their implications for clinical practice.

1. Introduction of SMMLE

SMMLE is a novel machine learning model for classifying individuals based on their medical history. It uses a deep learning architecture consisting of two parallel neural networks, one for each gender. The two networks share common layers and are trained jointly. The model is able to predict the probability of an individual having a history of disease based on their age, sex, and other relevant factors. The model has been shown to outperform existing models in terms of accuracy and precision.

In this paper, we propose a novel machine learning model for classifying individuals based on their medical history. The proposed model is a deep learning architecture consisting of two parallel neural networks, one for each gender. The two networks share common layers and are trained jointly. The model is able to predict the probability of an individual having a history of disease based on their age, sex, and other relevant factors. The model has been shown to outperform existing models in terms of accuracy and precision.

2. Application of SMMLE model based on the data

We applied the proposed model to the data provided by the hospital. The data was collected from the hospital's electronic medical records system. The data included information on the patient's age, sex, medical history, and laboratory test results. We used a deep learning architecture consisting of two parallel neural networks, one for each gender. The two networks shared common layers and were trained jointly. The model was able to predict the probability of an individual having a history of disease based on their age, sex, and other relevant factors. The model has been shown to outperform existing models in terms of accuracy and precision.

Overall, our findings suggest that SMMLE model is able to predict the probability of an individual having a history of disease based on their age, sex, and other relevant factors.

are not subject to regulatory flexibility analyses because they are not small businesses. [RM524] We have made similar determinations in other areas. [RM524] While we recognize SBA's special role and expertise with regard to the RFA, we are not fully persuaded on the basis of this record that our prior practice has been incorrect. Nevertheless, in light of NCCA's concerns, we will conduct an analysis on the impact of our regulations in this Order on small incumbent LBOs, in order to review any possible issue of RFA compliance. We therefore need not address NCCA's argument that many of its members are "small business concerns" for purposes of the RFA. [RM625]

C. Description and Estimation of the Number of Small Entities Affected by this Order

221. In this Order, we examine the impact of this Order on two categories of local exchange carriers, "small incumbent LBOs" and "small non-incumbent LBOs." Consistent with our prior practice, we shall continue to exclude small incumbent LBOs from the definition of a small entity for the purpose of this RFA. Accordingly, our use of the terms "small entities" and "small businesses" does not encompass "small incumbent LBOs." We use the term "small incumbent LBOs" to refer to any incumbent LBO [RM626] that arguably might be defined by SBA as "small business concerns." [RM627] We do not include "small non-incumbent LBOs" in our analysis, even though we believe that we are not required to do so. [RM628]

222. For the purposes of this Order, the RFA defines a "small business" to be the same as a "small business concern" under the Small Business Act, 15 U.S.C. § 652, unless the Commission has developed one or more definitions that are appropriate to its activities. [RM629] Under the Small Business Act, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operations; and (3) meets any additional criteria established by the SBA. [RM630] SBA has defined a small business for Standard Industrial Classification (SIC) category 4813 (Telephone Communications, Except Radiotelephone) to be a small entity when it has fewer than 1,500 employees. [RM631]

223. Incumbent LBOs. SBA has not developed a definition of small incumbent LBOs, the closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of LBOs nationwide of which we are aware appears to be the data that we collect annually in connection with the Telecommunications Delay Schedule (TDS). According to our most recent data, 1,347 companies reported that they were engaged in the provision of local exchange services. [RM632] Although it seems certain that some of these entities are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of LBOs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,500 small incumbent LBOs that may be affected by the decisions and orders we adopted in this Order.

224. Non-Incumbent LBOs. SBA has not developed a definition of small non-incumbent LBOs. For purposes of this Order, we define the category of "small non-incumbent LBOs" to mean small entities providing local exchange services which do not fall within the statutory definition in section 2(h), including potential LBOs, LBOs which have entered the market since the 1996 Act was passed, and LBOs which were not members of the exchange carrier association pursuant to section 68.601(b) of the Commission's regulations. [RM633] We believe it is impractical to estimate the number of small entities in this category. [RM634] We are unaware of any data on the number of LBOs which have entered the market since the 1996 Act was passed, and we believe it is impossible to estimate the number of entities which may enter the local exchange market in the near future. Nevertheless, we will estimate the number of small entities in a subgroup of the category as

Term I now incubant issue.' According to our most recent data, 57 companies identify themselves in the category 'Competitive Access Providers (CAPs) & Competitive LBOs (CLBs).' [PX631] A CLBC is a provider of local exchange services which does not fall within the definition of 'incumbent LBO' in section 251(h). Although it seems certain that some of the carriers in this category are CAPs, [PX632] are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of non-incumbent LBOs that would qualify as small business concerns under SBA's definition.

B. Summary Analysis of the Prospective Reporting, Recordkeeping, and Other Compliance Requirements

125. Under our current regulations, independent LBOs are classified as non-incumbent interexchange carriers if they provide interstate, domestic, interexchange services through an affiliate that satisfies the separation requirements established in the Fifth Report and Order. Independent LBOs offering interstate, domestic, interexchange services directly (rather than through a separate affiliate), or through an affiliate that does not satisfy the specified conditions, are subject to dominant carrier regulation. Independent LBOs are permitted to provide international, interexchange services subject to non-dominant or dominant regulation, as determined on a case-by-case basis. Non dominant interexchange carriers are not subject to rate regulation, and currently may file tariffs that are presumed lawful in 60 days notice and without cost support. [PX637] Non dominant carriers are also subject to streamlined service 214 requirements. [PX628] Compliance with these requirements may require small incumbent LBOs to use accounting, economic, technical, legal, and ethical skills.

126. In this Order, we have found that all incumbent independent LBOs, including the 11 incubant independent LBOs, must provide in-region, interstate, domestic, interexchange services through a separate affiliate that satisfies the Fifth Report and Order requirements. We are aware of three companies currently providing interexchange services directly on dominant basis, Union Telephone Company (of Wyoming), GTE Hawaiian Tel., and AT&T. We permit companies that are not currently providing interexchange services through a separate affiliate that satisfies the Fifth Report and Order requirements one year from January 1, 1997 to comply with the Fifth Report and Order separation requirements. We also extend this regulatory regime, which applies to domestic services, to international, interexchange services as well. Pursuant to this Order, all incumbent independent LBOs, including small incumbent independent LBOs, must provide in-region, interstate, domestic, interexchange services and international, interexchange services through a separate affiliate that satisfies the Fifth Report and Order separation requirements. Specifically, incumbent independent LBOs must provide these services through a separate affiliate that must: (1) maintain separate books of account; (2) not jointly own transmission or switching facilities with its affiliated exchange companies; and (3) obtain any services from its affiliated exchange companies at tariffed rates and conditions. [PX639] In this Order, we have also eliminated the Fifth Report and Order separation requirements as a condition for consideration of treatment of incumbent independent LBOs' provision of out-of-region, interstate, domestic, interexchange services.

C. Steps Taken to Minimize the Significant Economic Impact of this Report and Order on Small Entities and Small Incumbent LBOs, Including the Significant Alternatives Considered and Rejected

127. We believe that our actions eliminating dominant carrier regulation of independent LBO provision of in-region, interstate, domestic, interexchange

service, yet maintaining all of the Fifth Report and Order separation requirements to guard against anticompetitive conduct, in the form of cost misallocation or unreasonable discrimination, we must state the provision of in-region, interstate, domestic, interexchange services by independent LBOs, many of which may be small incumbent LBOs. We reject proposals to remove the Fifth Report and Order requirements, for reasons set forth in Section IV.B.1.

225. Our actions seem likely to benefit all incumbent independent LBOs providing in-region, interstate, domestic, interexchange services on a non-dominant basis, most of which may be small incumbent LBOs, because any increase in costs of regaining compliance can be amortized over a period of one year. As noted in Section IV.B.1, incumbent LBOs that currently provide these services on an integrated basis subject to dominant carrier regulation are given one year from the date of release of this Order to comply with the Fifth Report and Order separation requirements.

226. We decline to impose section 202 requirements, subjects of dominant carrier regulation, or any additional requirements on independent LBOs' provision of in-region, interstate, domestic, interexchange services. Consistent with our belief that independent LBOs are less likely to be able to engage in anticompetitve behavior than the BOCs, ITX-40, we therefore establish a less stringent regulatory regime for the independent LBOs. This seems likely to benefit independent LBOs, including small incumbent LBOs, by not subjecting them to burdensome regulations that may serve only to hamper competition in the interexchange market. For the reasons set forth in Section IV.B.1, we reject alternatives to impose additional requirements on independent LBOs' provision of in-region, interstate, domestic, interexchange services.

227. We limit the scope of the separation requirements to incumbent independent LBOs. By not imposing the Fifth Report and Order requirements on non-incumbent LBOs, we avoid imposing unnecessary regulation on new entrants into the local exchange market that wish to provide in-region, interstate, domestic, interexchange services, and will not have control of incumbent local exchange and exchange access facilities. This seems likely to benefit all of these new entrants, some of which may be small entities, by lowering entry costs, easing the disparity in market power between new entrants and incumbent LBOs, minimizing the risk of being subjected to legal action, and decreasing administrative costs. We reject proposals to subject non-incumbent LBOs to the same requirements as incumbent LBOs, for the reasons set forth in Section IV.B.2.

228. We apply our regulations equally to all incumbent independent LBOs, in view of our conclusion that the size of an independent LBO will not affect its incentive to engage in cost misallocation between its monopoly services and its competitive services. Our aim is intended to foster competition in the in-region, interstate, domestic, interexchange marketplace nationwide by preventing all incumbent independent LBOs, regardless of size, from using their control of bottleneck local exchange and exchange access facilities to thwart new entry. This seems likely a benefit all new entrants into the local exchange market that wish to provide in-region, interstate, domestic, interexchange services, some of which may be small entities, by helping to reduce entry costs and lower the disparity in market power between new entrants and other incumbent LBOs. Moreover, our action will easily help to establish more favorable entry conditions uniformly nationwide, increasing certainty which will benefit all new entrants, including small entities. We reject alternatives to exempt all incumbent LBOs with less than two percent of the nation's access lines from our regulations, for the reasons stated in Section IV.B.3.

229. We extend the regulatory regime described above, which governs independent LBOs' provision of in-region, interstate, domestic, interexchange services, to independent LBOs' provision of in-region, international services. We believe that this action will benefit incumbent LBOs and non-incumbent LBOs, some of which may be

small, independent LDCs or small entities, for the same reasons enumerated in our analysis for in-region, interstate, domestic, interexchange services, such as allowing to reduce market entry costs, increasing the disparity in market power between new entrants and other incumbent LDCs, and lowering administrative costs. We decline to treat independent LDCs' provision of in-region, interstate, domestic, interexchange services and in-region, international services differently, for the reasons stated in Section IV.B.1.

233. As stated in Section IV.B.5, we intend to commence a proceeding three years from the date of adoption of this Order to determine whether the emergence of competition in the local exchange and exchange access marketplace justifies removal of the Title I Report and Order requirements. We believe that three years should be a reasonable period of time in which to expect effective competition to develop in local exchange and exchange access markets. We reject proposals to decide in this proceeding whether to adopt separate affiliation requirements for independent LDCs, for the reasons stated in Section IV.B.5.

234. Report to Congress: The Commission shall send a copy of this RFA, along with this Report and Order, in a report to Congress pursuant to the SBRAFA, § 201(d)(1)(A). A copy of this analysis will also be provided to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the Federal Register.

VII. FINAL PAPERWORK REDUCTION ANALYSIS

235. Each of the two Notices of Proposed Rulemaking issued under this Order issues proposed changes to the Commission's information collection requirements. As required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-14, the Commission sought written comment from the public and from the Office of Management and Budget (OMB) on the proposed changes. The collectors concerned therein, however, are addressed in other proceedings. (INM1)

236. In this Order, we have decided to require independent LDCs to comply with Title I Report and Order separation requirements in order to provide interstate, interexchange services. Pursuant to the separation requirements, an independent LDC and its international, interexchange affiliate must maintain separate books of account. This requirement constitutes a new "collection of information" within the meaning of the Paperwork Reduction Act of 1995, 44 U.S.C. § 3501-3502. Implementation of this requirement is subject to approval by the Office of Management and Budget as prescribed by the Paperwork Reduction Act.

VIII. ORDERING CLAUSES

237. Accordingly, it is ORDERED that pursuant to sections 2, 4, 201, 202, 221, 272, 472 and 501(c) of the Communications Act of 1934, as amended, 47 U.S.C. § 151, 152, 153, 201, 202, 471, 501, 272, and 503(c), the REPORT AND ORDER IS APPROVED, and the requirements contained herein will become effective 30 days after publication of a summary in the Federal Register. The collection of information contemplated within is contingent upon approval by the OMB.

238. IT IS FURTHER ORDERED that Part 64, Subpart D of the Commission's rules, at Part 64, 64G, is APPROVED as set forth in Appendix B hereto.

239. IT IS FURTHER ORDERED that the secretary shall send a copy of this REPORT AND ORDER, including the final regulatory flexibility analysis, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with paragraph (c)(5)(i) of the Regulatory Flexibility Act, 44 U.S.C. § 601 et seq.

FEDERAL COMMUNICATIONS COMMISSION

William F. Yelton

Acting Secretary

1996 Telecommunications Act of 1996. Pub. L. No. 104-104, 110 Stat. 56 (1996 Act), codified at 47 U.S.C. § 151 et seq. (hereinafter, all citations to the 1996 Act will be to the 1996 Act as it is codified in the United States Code.) The 1996 Act amended the Communications Act of 1934 (Communications Act).

1996. See Joint Statement of Managers, S. Conf. Rep. No. 104-230, 104th Cong., 2d sess. (1996); Joint Explanatory Statement; see also 47 U.S.C. § 706(f) (encouraging the deployment of advanced telecommunications capability to a 1 nation state).

1996. For purposes of this proceeding, we adopt the definition of the term "BELL Operating Company" contained in 47 U.S.C. § 153(4).

1996. See 47 U.S.C. § 271(e)(3). The Modification of Final Judgment (MFJ), which ended the government's antitrust suit against AT&T, and which resulted in the divestiture of the BOCs from AT&T, prohibited the BOCs from providing interLATA services. See United States v. Western Elec. Co., 153 F. Supp. 131, 214 n.316 (S.D.N.Y. 1957); United States v. Western Elec. Co., 152 F. Supp. 131 (S.D.G. 1957). In the 1996 Act, Maryland v. United States, 460 U.S. 1001 (1983); see also United States v. Western Elec. Co., Civil Action No. 82-0182 (D.D.C. Apr. 11, 1996) (vacating the MFJ). For purposes of this proceeding, we adopt the definition of the term "in region state" that is contained in 47 U.S.C. § 271(e)(3). We note that section 271(e) provides that a BOC's in region services include BSC service, private line service, or their equivalents that terminate in an in region state of that BOC and that allow the called party to determine the interLATA carrier, even if such services originate out of region. 47 U.S.C. 271(e). The 1996 Act defines "interLATA services" as "telecommunications between a point located in a local access and transport area and a point located outside such area." 47 U.S.C. § 153(31). Under the 1996 Act, a "local access and transport area" (LATAs) is "a contiguous geographic area (A) established before the date of enactment of the [1996 Act] by a [BOC], such that no exchange area includes points within more than 1 metropolitan statistical area, consolidated metropolitan statistical area, or state, except as expressly permitted under the AT&T Consent Decree; or (B) established or modified by a [BOC] after such date of enactment and approved by the Commission." 47 U.S.C. § 153(31). LATAs were created as part of the RFT's "plan of reorganization." United States v. Western Elec. Co., 560 F. Supp. 1257 (D.D.C. 1983), aff'd sub nom. California v. United States, 462 U.S. 1612 (1983). Pursuant to the RFT, "all BOC territory in the continental United States [was] divided into LATAs, generally centering upon a city or other commercially important city of interest." United States v. Western Elec. Co., 560 F. Supp. 1257 (D.D.C. 1983).

1996. Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, CC Docket No. 96-52, Notice of Proposed Rulemaking, 11 FCC Reg. 141 (rel. Mar. 21, 1996) (InterExchange NRM).

1940 AMI 19383) (FCC), 12 FCC R. 15,756, 12 FCC Rep. 13,756, 7 Communications Reg. (P&F) 768
• Publication page references are not available for this document.)

requirements of section 221(e). Id. at 271(d)(2)(E).

FN10. 47 U.S.C. § 272(a)(1).

FN11. Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended; and Regulatory Treatment of IEC Provisions of Interexchange Services Originating in the IEC's Local Exchange Area. Docket No. 96-143, Notice of Proposed Rulemaking, FCC 96-308 (rel. July 16, 1996) (Non-Accounting Safeguards Order).

FN12. Id. at ¶ 142. For convenience, we use the term "BOC interLATA affiliates" to refer to the separate BOC rates established by the BOCs, in conformance with section 271(e)(1), to provide inter-region, interLATA services. Although we referred to these affiliates as "BOC affiliates" in the Notice, our findings in this Order apply only to affiliates established in conformance with section 271(a)(1).

FN13. Id. at ¶ 2 157-52. For purposes of this proceeding, we have defined an "independent LEC's" "inter-regional services" as telecommunications services originating in the independent LEC's local exchange areas or PSC service, private line service, or their equivalents that: (i) terminate in the independent LEC's local exchange areas, and (ii) allow the called party to determine the interexchange carrier, even if the service originates outside the independent LEC's local exchange areas. Id. at ¶ 6 n.12.

FN14. Id. at ¶ 2 150, 160.

FN15. Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended. CC Docket No. 96-143, First Report and Order and Further Notice of Proposed Rulemaking, FCC 96-489 (rel. Dec. 20, 1996) (Non-Accounting Safeguards Order); en banc pending petition for review pending sub m., Bell Atlantic v. FCC, No. 97-106 (D.C. Cir. filed Jan. 21, 1997), vacated and remanded in part (Mar. 31, 1997) petition for review pending sub m., BOC Administrations v. FCC, No. 97-1118 (D.C. Cir. filed Mar. 6, 1997).

FN16. Reg. orientation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996, CC Docket No. 96-150, Report and Order, FCC 98-193 (rel. Dec. 24, 1996) (Accounting Safeguards Order).

FN17. 1992 Department of Justice/Federal Trade Commission Merger Guidelines, 4 Trade Reg. Rep. (CCH) ¶ 1e,194, at 16,505 (1992 Merger Guidelines).

FN18. Demand substitutability identifies all of the products or services that consumers view as substitutes for each other, in response to changes in price. For example, if, in response to a price increase for orange juice, consumers instead purchase grape juice, apple juice would be considered a demand substitute for orange juice.

FN19. In places where we use the term "long distance services," we mean interstate, domestic or international, interLATA services provided by the BOC interLATA affiliates and interstate, domestic or international, interexchange services.

provided by independent LBOCs, respectively.

FN20. See *supra* ¶ 12 for more detail on the regulatory distinctions between dominant and non-dominant interexchange carriers.

FN21. Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, CC Docket No. 78-240, Fifth Report and Order, 9 FCC 2d 1511 (1981) (Competitive Carrier Rate Report and Order). Nevertheless, we give carriers providing in-region, interexchange services on an integrated basis one year from the date of release of this order to comply with the Competitive Carrier Rate Report and Order separation requirements. See *infra* section II.B.

FN22. In doing so, we emphasize that there is more than one basis for finding a U.S. carrier dominant in the provision of international services. The separate issue of whether A BOC's international affiliate, an independent LBOC affiliate, or any other U.S. carrier should be regulated as dominant in the provision of international services based on the market power of an affiliated foreign carrier in a foreign destination market was addressed by the Commission last year in the Foreign Carrier Policy Order, Market Entry and Regulation of Foreign-affiliated Entities, CC Docket No. 90-22, 200-2050, 12 FCC 2d 1273 (1995) (Foreign Carrier Entry Order), recently pending. See also Regulation of International Common Carrier Services, CC Docket No. 91-360, Report and Order, 12 FCC Rep. 222, 223, 224, 225, 226 (1995) (International Services Order). The Foreign Carrier Entry Order established a separate framework adopted in the International Services Order for regulating U.S. international carriers (including BOCs or independent LBOCs) ultimately authorized to provide in-region international services as dominant on routes where an affiliated foreign carrier has the ability to discriminate in favor of the U.S. affiliate through control of bottleneck services or facilities in the foreign destination market. The carriers are exempt from this policy to the extent they have foreign affiliates. Section 62.10(a) of the Commission's rules provides that: (1) carriers having no affiliation with a foreign carrier in the destination market are presumptively non-dominant for that route; (2) carriers affiliated with a foreign carrier that is a monopoly in the destination market are presumptively dominant for that route; (3) carriers affiliated with a foreign carrier that is not a monopoly on that route receive closer scrutiny by the Commission; and (4) carriers that serve an affiliated destination market solely through the resale of an affiliated U.S. facilitation-based carrier's switched services are presumptively non-dominant for that route.

FN23. In the Non Accounting Safeguards Order, we concluded that the regular FCC safeguards apply to the BOCs' provision of in-region, international services. Non-Accounting Safeguards Order at ¶ 50.

FN24. Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, CC Docket No. 79-252, Notice of Inquiry and Proposed Rulemaking, 12 FCC 2d 103 (1979); First Report and Order, 15 FCC 2d 1 (1980) (Competitive Carrier First Report and Order); FURTHER NOTICE OF PROPOSED RULEMAKING, 16 FCC 2d 108 (1981); Second Further Notice of Proposed Rulemaking, 16 FCC 2d 173 (1981); Second Report and Order, 19 FCC 2d 50 (1982); Order on Reconsideration, 19 FCC 2d 54 (1983); Third Further Notice of Proposed Rulemaking, 20 FCC 2d 702 (1983); Third Report and Order, 22 FCC 2d 701 (1984); fourth Report and Order, 25 FCC 2d 556 (1984) (Competitive Carrier Fourth Report and Order); vacated, AT&T v. FCC, 975 F.2d 737 (D.C. Cir. 1992), *cert. denied*, 505 U.S. 963 (1993).

1997 W.L. 193811 (F.C.C.), 12 FCC.C.R. §5.756, 12 FCC Rep. 15,756, 7 Communications Reg. (P&F) 768
(Publication page references are not available for this document)

Competitive Carrier Fifth Report and Order, 98 FCC 2d 1191 (1994); Sixth Report and Order, 98 FCC 2d 1022 (1995); Accord, AT&T Telecommunications Corp. v. FCC, 116 F.3d 1155, 1163, C.A. 1, 1995 (Competitive Carrier Sixth Report and Order) (hereinafter referred to as the Competitive Carrier Proceeding).

FCC, Competitive Carrier First Report and Order, 95 FCC 2d 12, Competitive Carrier Fourth Report and Order, 95 FCC 2d 554; Competitive Carrier Fifth Report and Order, 98 FCC 2d 1191. See also 47 C.F.R. § 61.3(b).

FCC, Competitive Carrier Fourth Report and Order, 95 FCC 2d 12, ¶ 556, ¶ 7, ¶-8 (citing inter alia A. Areeda & D. Turner, Antitrust Law 312 (1978) and W.H. Landes & R.W. Posner, Market Power in Antitrust Cases, 54 Harvard L. Rev. 917, 917 (1981)); the 1992 Department of Justice/Federal Trade Commission Merger Guidelines similarly define market power as "the ability profitably to maintain prices above competitive levels for a significant period of time." 1992 Merger Guidelines, ¶ 70, ¶70.

FCC, Competitive Carrier Third Report and Order, 95 FCC 2d 12, ¶ 562, ¶ 15.

FCC, id. at 375-80, ¶ 1, ¶ 51-53; Competitive Carrier Fifth Report and Order, 98 FCC 2d 1191, ¶ 209, ¶ 5, ¶ 6-11; Common-Carrier Six Report and Order, 99 FCC 2d 12, ¶ 12, ¶ 12.

FCC, 57 C.F.R. § 61.3(b), 61.3(c).

FCC, Tariff Filing Requirements for Nondominant Carriers, CC Docket No. 93-36, Order, 51 FCC 2d 13,653 (1994). As previously discussed, we adopted mandatory ratification for nondominant interexchange carriers in the Tariff Forbearance Order, but that Order has been stayed pending judicial review. See *supra* n. 8.

FCC, See 47 C.F.R. § 61.3(b)(1)-(3).

FCC, See id. § 61.3(b), ¶ 559(a). We note that, effective February 1997, a local exchange carrier may file with the Commission a new or revised charge, classification, regulation, or practice on a streamlined basis. Unless the Commission takes action under 47 U.S.C. § 204(a)(1), any charge, classification, regulation, or practice shall be deemed lawful and shall be effective 7 days (in the case of a rate reduction) or 15 days (in the case of a rate increase) after the date on which it is filed with the Commission. 47 U.S.C. § 204(a)(1). See also Implementation of Section 402(e)(1)(B) of the Telecommunications Act of 1996, CC Docket No. 96-182, Report and Order, 99-57-23 (rel. Jan. 14, 1997).

FCC, 47 C.F.R. § 61.3(b), 62.01 et seq. We note that the Commission has simplified this process to permit a carrier to file an entire "line list" (Section 214 application for all construction planned for the year). See id. § 62.06. Moreover, pursuant to section 402(b)(2)(A) of the 1996 Act, the Commission is required to "permit any common carrier ... to be exempt from the requirements of Section 214 of the 1984 Act, due to extension of any line." We are advancing the implementation of section 402(b)(2)(A), including the issue of what constitutes an "extension of any line," in a separate proceeding. See Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996, CC Docket No. 97-12, Notice of Proposed Rulemaking, FCC 97-6 (rel. January 15, 1997). Finally, we note that the Commission has

eliminated prior approval requirements to add, modify, or delete circuits on authorized international routes as they apply to U.S. international carriers that are regulated as dominant for reasons other than having foreign carrier affiliation. In addition, such dominant carriers are required to obtain prior Commission approval to discontinue, reduce, or impose service on a particular route that would the Commission of the conveyance of international cable capacity. See Streamlining the International Section 214 Authorization Process and Tariff Requirements, 19 Docket No. 95-118, Report and Order, FCC 96-78, ¶ 1, 50, 77, 80-81 (rel. May 17, 1996) (Streamlining Order).

PN34. Competitive Carrier First Report and Order, 95 FCC 76 at 23, ¶ 23. In light of increasing competition in the interstate, domestic, interexchange telecommunications market, and evidence that AT&T no longer possessed the ability to control price unilaterally, the Commission reclassified AT&T as a non-dominant carrier in that market. Notice of Rule Change by Reclassification as a Non-Dominant Carrier, 11 FCC Rcd 3171 (1996) (1997 Reclassification Order), record pending.

PN35. Competitive Carrier First Report and Order at 23, ¶ 31.

PN36. Competitive Carrier Fourth Report and Order, 95 FCC 2d at 575-79, ¶ 5, 31-32.

PN37. Competitive Carrier Third Report and Order, 95 FCC 2d at 1198, ¶ 4.

PN38. 13. The Commission noted that " [a]n affiliate qualifying as non-dominant, however, is not necessarily structurally separated from an exchange telephone company in the sense ordered in the Second Computer Inquiry by ¶(4)(c) of.

PN39. 13. et 1194-99, ¶ 3.

PN40. Tel. 13, ¶ 23 (citing United States v. Western Elec. Co., 554 A.2d 132 (D.D.C. 1985) (subsequent history omitted)).

PN41. The '932 Merger Guidelines define market power as "the ability profitably to constrain prices above competitive levels for a significant period of time." 1992 Merger Guidelines at 20, ¶71. "Sellers with market power also may lessen competition on dimensions other than price, such as product quality, service, or innovation." *id.* at 20, ¶71, note 6.

PN42. Competitive Carrier Fourth Report and Order, 95 FCC 2d at 503, ¶ 13.

PN43. Interexchange RPM, 11 FCC 2d at 7164, ¶ 40.

PN44. Non-Broadcasting Safeguards MISC 21, ¶ 11-.

PN45. Interexchange RPM, 11 FCC 2d at 7164, ¶ 41.

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definitions are irrelevant. In assessing the market power of BOC interLATA affiliates or independent BOC service market power can be proven directly through the BOC's or independent LECs' control of bottleneck facilities.

FN60. AT&T April 19, 1996 Conference at 2, 16-17.

FN61. FCC Aug. 30, 1995 Reply at 17-18, 22.

FN62. Tel. at 18 n.10.

FN63. Tel. at 20. Although DOJ, like AT&T, believes that the market definition is irrelevant in assessing the market power of BOC interLATA affiliates, this conclusion is based on its assessment that the BOC interLATA affiliates will not be able to dominate, at least in the near term, the ~~new~~ ^{new} market power targeted by dominant carrier regulation. *Id.* at 16-17.

FN64. SBC Communications Company, Tel. (MFS) April 16, 1996 Conference at 1-4.

FN65. *Id.* at 4.

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FN66. *Id.* at 5.

FN67. MFS May 5, 1995 Reply at 3.

FN68. Supply substitutability identifies all productive capacity that can be used to produce a particular good, whether it is currently being used to produce that good or to produce some other, even unrelated, good. For example, if a factory that is producing desks now is an convenient quickly and inexpensively to the production of wheelbarrows, then the owner of that factory should be considered a potential producer of wheelbarrows. That does not mean, however, that desks and wheelbarrows are in the same relevant product market. As previously noted, general substitutability identifies all of the products or services that consumers view as substitutes for each other, in response to changes in price. For example, if an increase in price for orange juice causes consumers instead purchase apple juice, apple juice would be considered a demand substitute for orange juice.

FN69. MSA's concern here, by relying on the 1992 Merger Guidelines, the Commission will only consider demand-based factors in assessing market power is unfounded. As discussed supra, although we will rely on demand substitutability in defining relevant markets, market definition is only one component in assessing market power.

FN70. "These guidelines outline the present enforcement policy of the Department of Justice and the Federal Trade Commission (the 'Agency') concerning horizontal acquisitions and mergers ('mergers') subject to section 7 of the Clayton Act, to section 1 of the Sherman Act, or to section 5 of the FTC Act.' 1992 Merger Guidelines at p. 20,587-8.

FCC. We note that "there is a recognition in the 1992 Merger Guidelines that they will be applied to a broad range of possible factual circumstances." 1992 Merger Guidelines at p. 20,589 3.

FCC, Dkt. Aug. 30, 1996 Reply at 14, note 16.

FCC, 78.

FCC, for example, potential new entrants to the long distance marketplace, such as ISPs, utility companies, and cable companies, possess different characteristics that could impact, inter alia, the type of services offered in the long distance marketplace and the manner in which long distance services are priced.

FCC, *Intercom.,* USIA Aug. 15, 1996 Comments (Chairman Appendix at 2); AT&T April 19, 1996 Comments at 9, 14-16; BellSouth May 9, 1996 Reply at 4.

FCC, As previously noted, supply substitutability identifies all productive capacity that can be used to produce a particular good, whether it is currently being used to produce that good or to produce some other, even unrelated, good.

Note, In the 1992 Merger Guidelines note, "[t]o the defined, a relevant market must be measured in terms of its participants and concentration. Participants include firms currently producing or selling the market's products in the market's geographic area. In addition, participants may include other firms depending on their likely supply responses to a 'small but significant and nontransitory' price increase. A firm is viewed as a participant if, in response to a 'small but significant and nontransitory' price increase, it is likely would enter rapidly the production or sale of a market product in the market's area, without incurring a significant sunk costs of entry and exit. Firms likely to make only a few supply responses are considered to be 'nonparticipants' because their supply response would create new production or sales in the relevant market and because that production or sale could be quickly terminated without significant loss." 1992 Merger Guidelines at p. 20,572.

MAY, As previously noted, demand substitutability identifies all of the products or services that consumers view as substitutes for each other, in response to changes in price.

FCC, 1992 Merger Guidelines at p. 20,571.

FCC, In the matter of Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier, 12 FCC Rep. 3,271 (1995) (AT&T Reclassification Order).

FCC, See e.g., BellSouth April 19, 1996 Comments at 9, Aug. 15, 1996 Comments at 63.

1E¹¹ See Qualitatively, 700, 39 L&J 293, 925, 930 (9th Cir. 1994).

1997 WL 197831 (FCC), 2 F.C.C.R. 15,736, 12 FCC Rep. (P&F) 768.
(Publication page references are not available for this document.)

TM82. In this regard, we note that the State of Hawaii, General Communications, Inc., and Total Telecommunications Services, Inc. have filed petitions for reconsideration of the 1996 Reclassification Order.

TM83. See e.g., J.S. West April 19, 1996 Comments at 2-3; Missouri Office of Public Counsel May 7, 1996 Reply at 2-3; BOC Atta. 30, 1996 Reply at 30.

TM84. Competitive Carrier Fourth Report And Order, 95 FCC 2d at 243, ¶ 23.

TM85. Interconnection Rules, 12 FCC Rule at ¶12, ¶ 28.

TM86. id., ¶ 47.

TM87. id.

TM88. CIO April 19, 1996 Comments at 4; PAPUC April 19, 1996 Comments at 6-5; TIAA April 19, 1996 Comments at 34.

TM89. BCB April 19, 1996 Comments at 7-9; TIAA April 19, 1996 Comments at 37; id.; Sprint April 19, 1996 Comments at 6-7.

TM90. See, e.g., SEMCO April 19, 1996 Conference at 5-6; STC May 6, 1996 Reply at 1-2.

TM91. CIO April 19, 1996 Comments at 4-5.

TM92. CIO May 6, 1996 Reply at 2-7.

TM93. Florida Public Service Commission (Florida PSC) April 19, 1996 Comments at 7-8.

TM94. AT&T April 19, 1996 Comments at 16 (quoting 1992 Merger Guidelines at p. 20,777 n.24); AT&T, as noted supra at ¶ 67, claims that market definition is irrelevant in analyzing the market power of BOCs and argues against modifying the current product market definition. It further claims that supply substitutability considerations lead to the conclusion that there is a single product market in interexchange services.

TM95. AT&T April 19, 1996 Comments at 17-18.

TM96. AT&T May 6, 1996 Reply at 7-8.

TM97. AT&T April 19, 1996 Comments at 51.

1997 WL 193431 (F.C.C.), 12 FCC R. 15,756, 12 FCC Rep. 15,756, 7 Communications Reg. (P&F) 768
(Publication page references are not available for this document.)

PN103. Id. at 21-20.

PN104. See also, NYNEX Aug. 19, 1996 Comments at 5-6; 3-8 (not April 19, 1996
Comments at 5-6); Rev. (Rebuttal April 19, 1996 Comments at 9-12, 26; FFC May 3, 1996
Reply at 1-2; Bell Atlantic April 19, 1996 Comments at 5).

PN105. See also, April 19, 1996 Comments at 15-14.

PN106. Id. at 14.

PN107. See also, Aug. 15, 1996 Comments at 63 (citing its April 19, 1996 Comments at
12-13).

PN108. See also, April 19, 1996 Comments at 14-15.

PN109. See also, 12-13.

PN110. BellSouth Aug. 15, 1996 Comments at 15-14.

PN111. Pacific Bell/AT&T Group (Pacific Bell) Aug. 15, 1996 Comments at 59.

PN112. GTE Aug. 15, 1996 Comments at 41-62.

PN113. Id. at 40-42.

PN114. XLT April 19, 1996 Comments at 6; GTE May 5, 1996 Reply at 4; TIA April 19,
1996 Comments at 22.

PN115. XLT Aug. 15, 1996 Comments at 59.

PN116. TIA April 19, 1996 Comments at 6-7.

PN117. Sprint Aug. 15, 1996 Comments at 60.

PN118. AT&T April 19, 1996 Comments at 1.

PN119. Id. at 2.

PN120. TIA April 19, 1996 Comments at 7.

PHOTO. PHOT April 19, 1996 Comments at 19-20.

PHOTO. The 1992 Merger Guidelines define the relevant product market as "a product or group of products such that a hypothetical profit maximizing firm that was the only present and future seller of those products ('monopolist') likely would expect at least a 'small but significant and nontransitory' increase in price." Accordingly, in defining the relevant product market, one must examine whether a "small but significant and nontransitory" increase in the price of the relevant product would cause enough buyers to shift their purchases to a second product, so as to make the price increase unprofitable. If so, the two products should be considered in the same product market. 1992 Merger Guidelines at p. 20, 572.

PHOTO. As previously noted, demand substitutability identifies all of the products or services that consumers view as substitutes for each other, in response to changes in price.

PHOTO. As previously noted, supply substitutability identifies all productive capacity that can be used to produce a particular good, whether it is currently being used to produce that good or to produce some other, even unrelated, good.

PHOTO. We disagree with DSTA that our approach to defining the relevant market in the international services market is inconsistent with our approach in the domestic context. See discussion infra at ¶ 9 - 12, 80.

PHOTO. For example, if the price/cost ratio for a particular interexchange service is four times that of the price/cost ratio for all other interexchange services, that may count as credible evidence of a lack of competitive performance.

PHOTO. For example, we noted in the Interexchange R&B that "our finding [in the AT&T Reclassification Order] that the prices of 800 directory assistance and analog private line services could profitably be raised above current levels may imply that these services constitute distinct relevant markets." Interexchange R&B, 14 FCC R&B at 7196, ¶ 41.

PHOTO. PHOT April 19, 1996 Comments at 7; PHOT April 19, 1996 Comments at 19-20.

PHOTO. In this proceeding, we only assess the market power of BOC interLATA affiliated and independent LECs. As noted above at ¶ 39, any ramifications that we may make to decisions reached in the AT&T reclassification Order will be addressed, if necessary, in further proceedings. We emphasize, however, that because market definition is only one step in assessing market power, changes made in the approach to defining relevant markets will not necessarily produce different assessments of market power.

PHOTO. Such data may include, but not be limited to, price level of services, the number of competitors, the share of sales by competitors, and the ease with which potential entrants can provide these services.

PHOTO. As we conclude infra at ¶ 50, for purposes of assessing the market power of

FCC InterDATA affiliates and independent LECs in their provision of domestic interexchange long distance services, we need not delineate separate product markets because there is no credible evidence in the record that indicates that there is or will be a lack of competitive performance associated with any particular long distance service offered by BOC InterDATA affiliates or independent LECs.

TM129. DMR April 19, 1996 Comments at 6.

TM130. See Tariff Posture/Order at 5-39.

TM131. Non Accounting Safeguards NEPA at 1-110.

TM132. See e.g., Bell South Aug. 15, 1996 Comments at 40-41; Sprint Aug. 15, 1996 Comments at 50; USA Aug. 15, 1996 Comments at 24; USIA Aug. 15, 1996 Comments at 10-12; BCI Aug. 15, 1996 Comments at 29-32

TM133. AUS I Aug. 15, 1996 Comments at 61-62.

TM134. DSC Aug. 15, 1996 Reply at 17.

TM135. BellSouth April 19, 1996 Comments at 12-13.

TM136. USCA Aug. 15, 1996 Comments (Qualcomm Aff. at 51); GTE Aug. 27, 1996 Comments at 7.

TM137. TOTB Aug. 15, 1996 Comments at 6-8.

TM138. GCA Aug. 15, 1996 Comments at 33.

TM139. See AT&T Relocation/Transition Order, 12 FCC Rcd. at 406-35, 54-56

TM140. Non Accounting Safeguards NEPA at 1-121.

TM141. BCI Aug. 15, 1996 Comments at 56-60; NYNEX Aug. 15, 1996 Comments at 51.

TM142. USIA Aug. 15, 1996 Comments (Macmillan Aff. at 5-6).

TM143. BellSouth Aug. 15, 1996 Comments at 1-81.

TM144. Sprint Aug. 15, 1996 Comments at 60-61.

TM145. See n. 37 supra.

1997 WL 193441 (1997) (AIA 47 CFR 15.756, 12 FCC Rcd. 15,756, 7 Communications Reg. (FCC) 768
(Publication page references are not available for this document.)

FN145. Competitor Recovery Report, Report, and Order, 95 FCC 94 at 563, ¶ 13.

FN146. BellSouth Telephone Co. (AM-19) FCC Rcd. 95, ¶ 16, 2157-68, ¶ 9, 42, 43.

FN147. Tel. at 7158 70, ¶ 9 31-52.

FN148. Tel. at 7170 70, ¶ 9 53.

EXHIBIT 1. Tel. at 7170 70, ¶ 9 54-55.

FN149. See e.g., BellSouth April 1, 1996 Comments at 16; Initiating Competitive Carrier Filing Report and Order, 95 FCC 94 at 574; BellSouth May 3, 1996 Reply at 4; Florida TSC April 3, 1996 Comments at 8-9; TSCA Aug. 15, 1996 Comments at 41; PacTel Aug. 15, 1996 Comments at 51; NYNEX Aug. 15, 1996 Comments at 52-54.

FN150. AT&T April 1, 1996 Comments at 9-7; TSCA Aug. 15, 1996 Comments at 47; BellSouth April 1, 1996 Comments at 6-7; TSCA Aug. 15, 1996 Reply at 15.

FN151. Bell South, Comments 1995 April 19, 1996 Comments at 13; TSC April 19, 1996 Comments at 4-5; TSC April 19, 1996 Comments at 5; Key at 1995 Reply at 3; MCI April 19, 1996 Comments at 4-5; TSCA April 19, 1996 Comments at 31-32.

EXHIBIT 17&C April 19, 1996 Comments at 18-21.

FN152. AT&T May 3, 1996 Reply at 6-7; Initiating Competitive Carrier Filing Report and Order, 95 FCC 94 at 573-74; Application of MCI Communications Corp. & S. Pac. Telecommunications Corp. for Consent to Transfer Control of Quail Communications, Inc., Minnesota Opinion and Order, 10 FCC Rcd 1072, 1071 (1997)).

FN153. BellSouth April 19, 1996 Comments at 19-20; BellSouth May 3, 1996 Reply at 4; NYNEX Aug. 15, 1996 Comments at 21.

FN154. BellSouth April 19, 1996 Comments at 13; BellSouth April 19, 1996 Comments at 17-19; PacTel April 19, 1996 Comments at 5-8.

FN155. Bell Atlantic April 19, 1996 Comments at 6-7.

FN156. PacTel April 19, 1996 Comments at 5-6.

1992 WL 193891 (FCC); 12 F.C.C.R. 15,256; 12 FCC Rec. 15,256, 7 Communications Rec. (Prel.) 768
(Publication page references are not available for this document.)

FN161. DCR Aug. 21, 1996 Comments at 4, n. 17.

FN162. RFR Aug. 29, 1996 Comments at 5; PostPet April 19, 1996 Comments at 5.

FN163. GTR April 19, 1996 Comments at 5; May 3, 1996 Reply at 4; GTR Aug. 29, 1996 Comments at 5.

FN164. GTR May 3, 1996 Reply at 5; GTR Aug. 29, 1996 Comments at 8.

FN165. PostPet April 19, 1996 Comments at 4.

FN166. RFR Aug. 30, 1996 Reply at 19.

FN167. PostPet April 19, 1996 Comments at 4-5.

FN168. RFR April 19, 1996 Comments at 4; GCI April 19, 1996 Comments at 3-4.

FN169. AMR April 19, 1996 Comments at 8.

FN170. RFR April 19, 1996 Comments at 3-4.

FN171. Id. at 3-6.

FN172. See, e.g., PostPet April 19, 1996 Comments at 1-3; RFR April 19, 1996 Comments at 10-11; Missouri Public Counsel May 3, 1996 Reply at 3. We note that Rand McNally & Company is the copyright owner of the Basic Trading and Major Trading Area Listings, which list the counties contained in each RTA, as embodied in Rand McNally's Trading Area System Sheets and Sales & Marketing Guide. Rand McNally has licensed the use of its copyrighted NTA/RTA Listings and maps for certain wireless telecommunications services. See Amendment of Parts 3 and 30 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 800 MHz and the 850-900 MHz Bands Allotted to the Specialized Mobile Radio Pool, PR Docket No. 86-552, Second Report and Order and Second Notice of Proposed Rulemaking, 10 FCC Rcd 4984, 6625-36 (1995).

FN173. GCI April 19, 1996 Comments at 3-4; GCI May 3, 1996 Reply at 2.

FN174. The 1992 merger Guidelines define the relevant geographic market as the "region such that a hypothetical monopolist that was the only present or future producer of the relevant product at locations in that region would profitably impose at least a small but significant and non-*transitory* increase in price, holding constant the terms of sale for all products produced elsewhere." Accordingly, in defining the relevant geographic market, one must examine whether a "small but significant and non-transitory" increase in the price of the relevant product at a particular location would cause a buyer to shift his purchase to a second location, so as to make the price increase unprofitable. If so, the two locations should be

1997 WL 193831 (F.C.C.), 12 F.C.C.R. 15,756, 12 FCC Rep. 15,756, / Communications Reg. (P&F) 768
(Publication page references are not available for this document.)

considered to be in the same geographic market. 1992 Merger Guidelines at pp. 20, 273 - 20,573-5.

FN175. As we described in the Interexchange NPPX, "residential interexchange services can be thought of as a bundle of all possible interexchanges as originating from a single point and terminating anywhere, and 800 service as a bundle of interstate, 'interexchange calls originating from a certain geographic region and terminating at a specific point.'" Interexchange NPPX, 11 FCC Rep. at 1810, ¶ 102.

FN176. Private line service is an example of a point-to-point service.

FN177. Residential long distance service is an example of a point-to-all-points service. Point-to-all-points service can be viewed as a bundle of point-to-point connections all originating at the same point.

FN178. Bell local 800 or 820 numbers that are accessible from all domestic geographic locations would be examples of an all points to point service. An all points to point service can be viewed as a bundle of point-to-point connections that all terminate at the same point.

FN179. For example, we note analysis of national market share data, rather than market share data for particular point-to-point markets.

FN180. Interexchange NPPX, 11 FCC Rep. at 7188-73, ¶ 4 - 51-52.

FN181. In many point-to-point markets (e.g., one home to another home), one long distance carrier will have 100 percent market share. This does not imply, however, that this particular long distance carrier has market power. Therefore, in using market share as one factor in assessing market power, it is important that we examine market share in the broadest geographic group of point-to-point markets in which competitive conditions are reasonably homogeneous.

FN182. NPPG also finds that the Commission should group relevant point-to-point markets according to intramarket characteristics, areas because they roughly approximate the geographic area in which buyers can practically turn to alternative sources of supply or in which there are not one that can act to restrain the prices charged to buyers. AT&T April 19, 1996 Comments at 6-7. NYNEX and GTE assert that none of the geographic areas identified in the Interexchange NPPX, such as local exchange areas, major trading areas, and SOAs, are relevant to the interexchange marketplace. NYNEX April 19, 1996 Comments at 5; GTE April 19, 1996 Comments at 5-6.

FN183. As noted *supra* at notes 170, 171, GCI identified the Alaska market as a separate geographic market. We also note that GCI has filed a petition seeking reconsideration of the AT&T Reclassification Order, in which it argues that the reclassification of AT&T does not apply to AT&T/Alaska. This because AT&T/Alaska is still dominant in the Alaska market. See GCI pet. for reconsideration of AT&T Reclassification Order (filed Nov. 20, 1995).

FN184. See *supra* ¶ 770.

FM157. Non Accounting Safeguards DFBM et al. § 126.

FM158. Td

FM159. See also, Sprint Apr. 15, 1996 Comments at 61-62; USIA Aug. 15, 1996 Comments at 74; BellSouth Aug. 15, 1996 Comments at 24; NYSC Aug. 15, 1996 Comments at 59; LDDS Aug. 30, 1996 Reply at 12.

FM160. JTA Aug. 15, 1996 Comments at 34; LDDS Aug. 30, 1996 Reply at 12-13.

FM161. TRRS April 19, 1996 Comments at 4.

FM162. MCI Aug. 15, 1996 Comments at 59

FM163. see, Aug. 16, 1996 Reply at 21

FM164. Sprint Aug. 15, 1996 Comments at 61-65; New York State Department of Public Service (NYDPS) April 30, 1996 Comments at 7.

FM165. Ameritech Aug. 15, 1996 Comments at 3; Bell Atlantic Aug. 15, 1996 Comments at 12; BellSouth Aug. 15, 1996 Comments at 40-51; NYSC Aug. 15, 1996 Comments at 51-53; PacTel Aug. 15, 1996 Comments at 50-51.

FM166. BellSouth April 19, 1996 Comments at 13, 16; BellSouth Aug. 15, 1996 Comments at 48; see USIA Aug. 30, 1996 Comments at 3.

FM167. BellSouth Aug. 15, 1996 Comments at 45-46; JTA Aug. 15, 1996 Comments (Macmanus aff. at 7).

FM168. NYSC April 19, 1996 Comments at 6-7.

FM169. NYSC Aug. 15, 1996 Comments at 52

FM170. BellSouth April 19, 1996 Comments at 17; Bell Atlantic April 19, 1996 Comments at 9; Bell Atlantic Aug. 15, 1996 Comments at 12-14; NYSC Aug. 15, 1996 Comments at 58.

FM171. JTA Aug. 26, 1996 Comments at 2-3 (Squibber aff. at 3-8).

FM172. Tel. (Squibber aff. at 6-7).

1997 WL 192831 (FCC), 2 F.C.C.R. 15,756, 12 FCC Rcd. 16,736, 2 Communications Reg. (P&D) 768
(Publication page references are not available for this document.)

PN201. AT&T (supra) aff'd at 7).

PN202. AT&T Aug. 15, 1996 Comments at 61; see generally General Services Administration (GSA) April 19, 1996 Comments at 2, May 3, 1996 Reply at 3.

PN203. AT&T Aug. 15, 1996 Comments at 61; see generally GSA April 19, 1996 Comments at 3, May 3, 1996 Reply at 3.

PN204. AT&T Aug. 15, 1996 Comments at 32. BOCs contend that AT&T's focus on the local exchange market is incorrect and would lead to the illogical conclusion that the BOCs should be dominant in the provision of interLATA services. CPE, AT&T cellular. USIA Aug. 30, 1996 Reply (hereinafter aff'd at 1-3).

PN205. In regions where AT&T's control over the local bottleneck may give it a noncompetitive advantage that it does not have out-of-region, resulting the BOC to compete differently in region than out-of-region. Therefore, the unique business conditions in region are likely to be different in-region than out-of-region.

PN206. AT&T Aug. 15, 1996 Comments at 61-62.

PN207. Non Accounting Safeguards NPPR at 9-10.

PN208. XCO Aug. 10, 1996 Comments at 58-60; NYNEX Aug. 15, 1996 Comments at 61; USIA Aug. 15, 1996 Comments at 43-44, n. 18.

PN209. In classifying AT&T as non-dominant in the provision of IWCs, we generally analyzed AT&T's market power on a worldwide basis as a surrogate for a route-by-route analysis, except a route-by-route analysis was employed to scrutinize those markets that have not supported entry by competing U.S. carriers. A route-by-route approach also was used to analyze the competitive impact of AT&T's affiliations and alliances with foreign carriers on particular U.S. international routes. In the Order of Release of AT&T from the Declared Dominance for International Service, Order, FCC 96-209, at 9-10 (rel. May 14, 1996).

PN210. As previously discussed, for convenience, we use the term 'BOC interLATA affiliates' to refer to the separate affiliates established by the BOCs, in conformance with section 272(c)(1), to provide in-region, interLATA services. See supra n. 13.

PN211. Our analysis of whether the BOC interLATA affiliates should be classified as dominant or non-dominant in the provision of in-region, interstate, domestic, interLATA services has no bearing on the determination of whether a BOC interLATA affiliate has satisfied the requirements of section 272(d)(3), and it should not be so interpreted as prejudicing such determinations in any way.

PN212. This proceeding does not modify the Commission's separate framework, adopted in the International Services Order and Foreign Carrier Entry Order, for regulating United States international carriers (including BOC interLATA affiliates or independent LECs) as dominant on routes where an affiliated foreign carrier has the

(99) WL 195881 (F.C.C.), 12 F.C.C.R. 15,756, 12 FCC Rep. 15,756, 7 Communications Reg. (P&F) 768
(Publication page references are not available for this document)

ability to discriminate in favor of its U.S. affiliate through control of bottleneck services or facilities in the foreign destination market. See infra ¶ 135.

¶¶213. Non Accounting Safeguards NFRM at ¶ 131. For convenience, we refer, as we did in the Notice, to a carrier's ability to engage in such a strategy as the ability to "raise prices."

¶¶214. Id. we also noted that economists have recognized these different ways to exercise market power by distinguishing between 'Exclusion' market power, which is the ability of a firm profitably to raise and sustain its price significantly above the competitive level by restricting its own output, and 'Reinforcement' market power, which is the ability of a firm profitably to raise and sustain the price significantly above the competitive level by raising its rivals' costs and thereby causing the rivals to restrain their output. T.G. Krugman, R.G. Ladd, and R.J. Wolff, Monopoly Power and Market Power, in Antitrust Law, 2d Ed., 341, 463-12 (D.B. 1987).

¶¶215. Non Accounting Safeguards NFRM at ¶ 132.

¶¶216. DOJ Aug. 30, 1996 Reply at 15; DSCM Aug. 15, 1996 Comments at 47; AT&T Aug. 30, 1996 Reply, Carriers Eff. at 2; N & W Sept. Aug. 15, 1996 Comments at 16; Citizens for a Sound Economy Foundation (CSE) Aug. 30, 1996 Reply at 6-9.

¶¶217. DOJ Aug. 15, 1996 Comments at 67-68; AT&T Aug. 15, 1996 Comments at 55.

¶¶218. DOJ Aug. 15, 1996 Comments at 61-62.

¶¶219. Id. at 67-68.

¶¶220. Non Accounting Safeguards NFRM at ¶ 132. Accord DSCM Aug. 15, 1996 Comments at 37; USCA Aug. 15, 1996 Comments at 47; DOJ Aug. 30, 1996 Reply at 16. As noted in the NFRM, the authorizations of market power cited by the Commission in the Competitive Carrier Report and Order referred to the concept of a carrier reducing prices by restricting its own output. Non Accounting Safeguards NFRM at ¶ 132 (citing Competitive Carrier Facility Report and Order, 75 FFC 2d at 555, ¶ 4, n.2).

¶¶221. AT&T Decategorization Order, 11 FCC Rep. at 3505, ¶ 162.

¶¶222. Bell Atlantic Aug. 15, 1996 Comments at 19 (current carrier regulation would not address any of the concerns raised in the Notice); AT&T Aug. 30, 1996 Reply at 23-24.

¶¶223. AT&T Aug. 15, 1996 Comments at 65-66. Accord DSCM Aug. 15, 1996 Reply at 27.

¶¶224. We also conclude below that price cap regulation of the BOCs' exchange access services will reduce the BOCs' incentive to misallocate the costs of their affiliated interLATA services. See infra ¶ 136.

FN225. See Competitive Carrier First Report and Order, 85 FCC 2d at 19, ¶ 116. See also S. Hirsch and L. D. Johnson, Behavior of the Firm under Regulatory Constraint 49 (1989). From Rev. 1053 (1962) (a firm under rate of return regulation has an incentive to invest in more than the efficient amount of plant in order to increase the value of its rate base).

FN226. 144 at 19, ¶ 114.

FN227. 47 C.F.R. § 60.07, 60.71. Section 60.07 requires non dominant carriers to report the completion or construction of initial or additional circuits to the Commission on a semi annual basis, while section 60.71 imposes certain notifications regarding discontinuance by non-dominant carriers that plan to reduce, expand, or discontinue services. We recognize that, for certain areas, even as those served by a single local exchange carrier or where equal access has not been implemented, it may still be appropriate for the Commission to review a carrier's proposal to discontinue service.

FN228. See also FBB Notices Aug. 15, 1996 Comments at 39-40 (removing BOC interLATA rates as dominant would provide a means to monitor BOC compliance with nondiscrimination requirements and the see also 201 checklist).

FN229. AFTR Pub. 15, 1996 Comments at 61; NCC Aug. 15, 1996 Comments at 84-85; FBB Notice Aug. 15, 1996 Comments at 69.

FN230. As we stated in the Notice, however, price cap regulation of a BOC interLATA affiliate's interLATA services generally would not prevent a BOC from raising its affiliate's rivals' costs through discrimination or other anticompetitive conduct, see Accounting safeguards XPRM at ¶ 152. It is so would not prevent the affiliate from profiting from the BOC's raising rivals' costs through increased market share. Id. (See also DDU Aug. 30, 1995 Reply at 25 (impact of price cap regulation on affiliate pricing, and therefore its deterrence effect, is not as clear)).

FN231. Foreign Carrier Entry Order, 12 FCC 2d at 570 (finding that the benefits derived from requiring the submission of cost support data were, as a general rule, outweighed by the burden imposed by the filing requirement).

FN232. Competitive Carrier First Report and Order, 85 FCC 2d at 34-42, ¶ 1 ¶ 99-133; BOC Reclassification Order, 11 FCC Rep. 41, 525, ¶ 27.

FN233. Plaintiff Forbearance Order at ¶ 53.

FN234. Plaintiff Forbearance Order at ¶ 1. As previously noted, the Plaintiff Forbearance Order is currently subject to a judicial stay. See *supra* n. 8.

FN235. Plaintiff Forbearance Order at ¶ 53.

FN236. 15, 24 ¶ 53.

FN227. See FCC Relicensing Order, 12 FCC Rep. at 1782, ¶ 27. Ameritech Aug. 15, 1996 Comments at 34 (advance notice of pricing and service initiation would deny BOC interLATA affiliation first-mover advantage that they would otherwise obtain and make them a step slower in the marketplace); PacTel Aug. 15, 1996 Comments at 27-28 (whatever the BOC interLATA affiliates' final prices, competitors would undercut them by a penny or two and thereby preserve their market share); SBC Aug. 15, 1996 Comments at 19 (long-distance tariff proceedings would allow competitors to access valuable cost and planning information, forewarning LEC opportunity for more effective competition); DOT Aug. 30, 1996 Reply at 23.

FN228. Tariff Portability Order at ¶ 152.

FN229. Upon full implementation of this Order, all domestic interexchange carriers will be reclassified as non-dominant carriers. See *infra* section IV.B.

FN230. See Aug. 30, 1996 Reply at 29. And A to Ameritech Aug. 15, 1996 Comments at 15 (independent interexchange carriers would routinely challenge tariffs of BOC interLATA at times on the "most-fairway of grounds").

FN231. BOC review that our rules now require the BOC interLATA affiliate, if classified as dominant, to report costs incurred from economy independent of their market dominance, which would be of little or no relevance to any cost misallocation problem. BOC Aug. 30, 1996 Reply at 20.

FN232. Under this scenario, a BOC would raise the price of access to all interexchange carriers, including its affiliate. This would cause competing interexchange carriers either to raise their own interLATA rates in order to maintain their same profit margins or to attempt to preserve their market share by not raising their prices to reflect the increase in access charges, thereby reducing their profit margins. If the competing interexchange service providers raised their rates to recover the increased access charges, the BOC interLATA rate could never be expected to market share by not matching the price increase. *See infra* ¶ 125.

FN233. *See infra* ¶ 4 ¶ 103-119.

FN234. DOT Aug. 30, 1996 Reply at 27.

FN235. See Bell Atlantic Aug. 15, 1996 Comments, Taylor ¶¶1, at 13.

FN236. Non-Accounting Refunds ¶¶22 at ¶ 113.

FN237. See, e.g., Ameritech Aug. 15, 1996 Comments at 8-12; Bell Atlantic Aug. 15, 1996 Comments at 50; PacTel Aug. 15, 1996 Comments at 53; U.S. West Aug. 15, 1996 Comments at 45; JEA Aug. 15, 1996 Comments at 44.

FN238. Ameritech Aug. 15, 1996 ¶¶22-23 at 8.

FM249. Ameritech Aug. 15, 1996 Comments at 3-10; U.S. West Aug. 15, 1996 Comments at 37-40. Compare Ameritech Aug. 15, 1996 Comments at 3 (if "quickly" means within a period of time longer than 4 years, elevating a BOC interLATA affiliate as dominant BOC would be premature).

FM250. USOC Aug. 15, 1996 Comments at 13-14.

FM251. AT&T Aug. 20, Reply at 11.

FM252. Non Accounting Safeguards NBBM at ¶ 133. Accord Ameritech Aug. 15, 1996 Comments at 8; BellSouth Aug. 15, 1996 Comments at 50; PacTel Aug. 15, 1996 Comments at 52; U.S. West Aug. 15, 1996 Comments at 45; USIA Aug. 15, 1996 Comments at 44.

FM253. AT&T Reclassification Order, 11 FCC Rep. at 3703-05.

FM254. Ameritech Aug. 15, 1996 Comments at 10; Bell Atlantic Aug. 15, 1996 Comments at 15; PacTel Aug. 15, 1996 Comments at 52.

FM255. Non-Accounting Safeguards NBBM at ¶ 135 (*Setting AT&T Reclassification Order*, 11 FCC Rep. at 3705-07); Accord USIA Aug. 15, 1996 Comments at 18.

FM256. Americom NYNEX Aug. 15, 1996 Comments at 50; BellSouth Aug. 15, 1996 Comments at 53; Ameritech Aug. 15, 1996 Comments at 11. See also AT&T Reclassification Order, 11 FCC Rep. at 3708 (finding that AT&T's cost structure, size and resources did not constitute "per se evidence" of market power). In the AT&T Reclassification Order, the Commission noted that the issue is whether a carrier's "lower costs, sheer size, superior resources, financial strength, and technical capabilities . . . have so great an effect to preclude the effective functioning of a competitive market." ¶ 24, 11 FCC Rep. at 3708, ¶ 23 (quoting Competition in the Telecommunications Marketplace, CC Docket No. 90-132, Report and Order, 6 FCC Rcd 5380, 5381-92).

FM257. Ameritech Aug. 15, 1996 Comments at 12.

FM258. Non-Accounting Safeguards NBBM at ¶ 136 (*Competitive Carrier Market Report*, 11 FCC Rep. at 3701, ¶ 56) (control of bottleneck facilities is "prime factor" for source of market power).

FM259. Id. at ¶ 135-41.

FM260. Id. at ¶ 142.

FM261. Ameritech Aug. 15, 1996 Comments at 13-17; PacTel Aug. 15, 1996 Comments at 53-54; U.S. West Aug. 15, 1996 Comments at 48-49.

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(Publication page references are not available for this document)

EX264. AT&T Aug. 15, 1996 Comments at 32.

EX265. USDS Aug. 20, 1996 Reply at 12.

EX266. Industry Analysis Division, Telecommunications Industry Division: TSD
Yearbook (ata, 1996, Com. Bus., 1996). Tables 14 and 15 show that BOC local
and long distance revenues in 1995 were \$61.6 billion, while CARS and Competitive LECs
"local" and "long distance" revenues both in and out of BOC regions were only \$595 million.

EX267. Stat. Aug., Bell Atlantic Aug. 15, 1996 Comments at 16; Ameritech Aug. 15, 1996
Comments at 17; BellSouth Aug. 15, 1996 Comments at 51-52; Pacific Aug. 15, 1996
Comments at 23-24; NYNEX Aug. 15, 1996 Comments at 55-56; USIA Aug. 15, 1996
Comments at 45-46.

EX268. Pacific Aug. 15, 1996 Comments at 55-56.

EX269. AT&T Aug. 15, 1996 Comments at 64 n.56.

EX270. Economic Strategy Task Aug. 20, 1996 Reply at 4.

EX271. Bell Aug. 15, 1996.

EX272. Stat. Aug., Bell Atlantic Aug. 15, 1996 Comments at 16; Pacific Aug. 15, 1996
Comments at 17-18; Ameritech Aug. 15, 1996 Comments at 23; N.Y. West Aug. 15, 1996
Comments at 19; USIA Aug. 15, 1996 Comments at 46-47. Bell Atlantic also argues
that if regulation would not drive out the major competitors, there is no way for a
BOC to recover predatory prices by charging rates above a competitive level, and
therefore predatory pricing against any competitor makes no sense. Bell Atlantic
Aug. 15, 1996 Reply at 21-22.

EX273. AT&T Aug. 15, 1996 Comments at 65; CUA Aug. 15, 1996 Comments at 35; DOJ Aug.
15, 1996 Reply at 24.

EX274. Bell Aug. 20, 1996 Reply at 24-25; AT&T Aug. 20 Reply at 35. AT&T also
contends that discrimination itself produces another form of cost misallocation
because an affiliate that receives favored treatment is essentially being
overcharged for those services and the BOC is unfairly bearing the extra costs.
AT&T Aug. 15, 1996 Comments at 53-54.

EX275. AT&T Aug. 15, 1996 Reply at 36.

EX276. DOJ Aug. 20, 1996 Reply at 25.

EX277. Non-Accounting Safeguards NPPR at 9-135.

EX278. Tel. 77 in short order, we do not dismiss cost misallocation as a potential